

# Teligent

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July 12, 2000

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 Twelfth Street, SW  
Room TW-A325  
Washington, D.C. 20554

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JUL 12 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Comments of Teligent, Inc. in Complete Detariffing for Competitive Access  
Providers and Competitive Local Exchange Carriers, CC Docket No. 97-146;  
Access Charge Reform, CC Docket No. 96-262

Dear Ms. Salas:

Enclosed please find the original and four copies of the comments of Teligent, Inc. in the above-referenced proceedings. A copy for the Chief of the Common Carrier Bureau's Competitive Pricing Division is being delivered under separate cover. In addition, a copy is also being sent to ITS by regular U.S. mail.

Please do not hesitate to telephone me at (703) 288-5715 if you have any questions regarding this submission. Thank you.

Sincerely,



Edward B. Krachmer  
Special Counsel, Regulatory Affairs  
and Public Policy  
Teligent, Inc.

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

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Complete Detariffing for Competitive Access

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Providers and Competitive Local

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Exchange Carriers

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Access Charge Reform

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CC Docket No. 97-146

CC Docket No. 96-262

**COMMENTS OF TELIGENT, INC.**

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July 12, 2000

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**COMMENTS OF TELIGENT, INC.**

Teligent, Inc. (“Teligent”) hereby submits its comments in the above-captioned proceedings.<sup>1</sup>

Teligent urges the Federal Communications Commission (“Commission”) to refrain from ordering mandatory detariffing of competitive local exchange carrier (“CLEC”) access charges. Mandatory detariffing will not only dramatically increase CLEC costs through requiring dozens of potentially lengthy negotiations, but will also place a severe burden on the resources of the Commission to resolve inevitable disputes. These issues and other related matters are discussed at length in the comments also filed today by the Association for Local Telecommunications Services (“ALTS”). Teligent strongly supports the comments submitted by ALTS in this matter and, to the extent necessary, incorporate them by reference herein.

For the most part, both originating and terminating CLEC access charges are adequately constrained by market forces, unlike ILEC access charges. Even in the most competitive

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<sup>1</sup> Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers, CC Docket No. 97-146; Access Charge Reform, CC Docket No. 96-262; Commission Asks Parties to Update and Refresh Record on Mandatory Detariffing of CLEC Interstate Access Services, DA 00-1268 (rel. June 16, 2000) (June 16, 2000 Notice).

markets, the overwhelming majority of local telephone customers subscribe to the ILEC. As a practical matter, no interexchange carrier (“IXC”) wishing to do business in a particular area could afford not to purchase access service from the ILEC in that area. To do otherwise would be to forfeit virtually all of its potential customers.

On the other hand, CLECs cannot afford to turn away large potential intrastate access customers because CLECs are unable to remain viable given the potential resulting loss of local (end user) customers. Few, if any, end users would purchase CLEC local service if it meant that they could not place or receive AT&T, MCI, or Sprint calls – the result of such IXCs refusing (with or without reasonable basis) to purchase a CLEC’s originating or terminating access service. For example, with regard to originating access, potential CLEC customers (particularly large sophisticated businesses) would often balk at purchasing a CLEC’s local service if they knew that their long distance carrier options would be significantly restricted. Regarding terminating access, the concept of selling a customer local service with the caveat that they will not be able to receive long distance calls from Sprint customers, for example, is indeed absurd. To this extent, IXCs have significant bargaining leverage with CLECs. At the same time, a large IXC might be able to forgo the relatively small amount of revenue it would lose if it had to tell its customers that they could not call the relatively few end users served by a particular CLEC.

To the extent the Commission does order mandatory detariffing, Teligent believes it critical to stress the need for a concurrent Commission order mandating that all IXCs interconnect with CLECs and purchase such CLECs’ access services if that CLEC’s access rates are identical to or lower than those charged by the incumbent local exchange carrier (“ILEC”).<sup>2</sup> Teligent has fully discussed the legal rationale for this pre-existing statutory obligation in its

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<sup>2</sup> Presumably, a CLEC’s interstate access service terms and conditions will be virtually identical to those of corresponding ILEC interstate access services.

Access Charge Reform FNPRM comments submitted to the Commission last fall,<sup>3</sup> and attaches them to these comments for incorporation into CC Docket No. 97-146. As a result, Teligent will not repeat those arguments here.

A baseline IXC interconnection obligation will significantly reduce CLEC interstate access negotiation costs. Teligent has already deliberately accommodated this increase cost factor by choosing to mirror ILEC access rates to avoid costly and time-consuming disputes with IXCs over its access rates. The consequences of such disputes are the inability of Teligent's local customers to access the IXC of their choice<sup>4</sup> and/or to receive incoming interexchange calls from end users using other certain IXCs. Teligent reminds the Commission that, although a concurrent IXC interconnection mandate would be helpful (and necessary), any environment of mandatory CLEC detariffing will inevitably involve unnecessarily increased negotiation costs that will make mandatory detariffing a costly requirement for CLECs.

Teligent believes that the Commission, in explicitly acknowledging a baseline IXC statutory interconnection obligation, should also make clear that an ILEC's access rates are not necessarily a presumptive cap on just and reasonable CLEC access rates, but simply a particular price-point at which IXCs clearly have certain access-related interconnection obligations. There are a variety of rationales and circumstances that result in certain CLEC access rates that exceed being ILEC access rates just and reasonable. These rationales and circumstances have already been discussed at length in the Access Charge Reform proceeding and are also discussed in ALTS's comments filed today.

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<sup>3</sup> Teligent Comments on Access Charge Reform, CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) (comments filed October 29, 1999).

<sup>4</sup> Teligent is obligated to provide such access pursuant to 47 U.S.C. § 251(b)(3).

The rare potential exceptional cases in which certain CLECs' access rates currently may not appear to be constrained by market forces are likely to be short-lived, especially as the state of the law concerning IXC obligations to purchase CLEC access services becomes more clear. To this extent, mandatory detariffing appears to be a costly reaction to an isolated and temporary potential problem.

For the foregoing reasons, Teligent respectfully requests that the Commission not order mandatory detariffing of CLEC interstate access services. In the event that the Commission chooses to impose such mandatory detariffing, in order to minimize the adverse effect of such action on CLECs, Teligent urges the Commission, at minimum, to acknowledge explicitly that IXCs have a statutory obligation to interconnect with CLECs and purchase such CLEC service when such CLECs not do not seek to impose rates greater than those of the ILEC.

Respectfully submitted,

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OCT 29 1999  
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In the Matter of

Access Charge Reform

Interexchange Carrier Purchases of Switched  
Access Services Offered by Competitive Local  
Exchange Carriers

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CC Docket No. 96-262

CCB/CPD File No. 98-63

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October 29, 1999

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**I. INTRODUCTION AND SUMMARY**

Teligent is a full-service, integrated communications company offering high-quality local, long distance, high-speed data, and dedicated Internet services to small and medium-sized business customers. By integrating advanced point-to-multipoint and point-to-point microwave radio equipment with traditional broadband wireline technology, Teligent's networks offer customers the advantages of lower rates and greater flexibility. Teligent holds Digital Electronic Message Service ("DEMS") licenses granted by the FCC in 74 major metropolitan areas throughout the United States and currently provides the full range of its services in 34 of these markets.

Because Teligent builds its own facilities to reach its end users, it concentrates its sales efforts primarily on selling total service packages, i.e., including long distance and Internet

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<sup>1</sup> Access Charge Reform, CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking (rel. Aug. 27, 1999) ("Notice").



services, to end users. Teligent does not at this time "market" discrete switched exchange access services to interexchange carriers ("IXCs"), rather its exchange access service arrangements with IXCs are based on Teligent's need to provide its local customers access to the long distance carriers of their choice (originating access) as well as to ensure that Teligent's local customers are able to receive calls from any other IXC's network (terminating access). To this end, Teligent has chosen to model its exchange access rate structure and rate level after the incumbent LECs because, by doing so, an IXC need not consider whether it is more expensive or too expensive to enter into access arrangements with Teligent vis-à-vis the incumbent LEC in that market area.<sup>2</sup> Performing cost studies to determine alternative access rate levels and structures is an extremely administratively burdensome task. In addition, modeling its exchange access rates after the incumbent LECs' access rate levels and rate structures enables Teligent to demonstrate to IXCs, on a simple and clear basis, that its interstate access rates are, indeed, no higher than incumbent LECs'.

As described below, Teligent urges the Federal Communications Commission ("Commission") to confirm that IXCs, at a minimum, have obligations to purchase interstate access service offered by CLECs as long as the CLEC's access rates, terms, and conditions are consistent with the terms of sections 201 and 202 of the Act, i.e., are just, reasonable, and nondiscriminatory. Teligent believes that a failure to do so will significantly retard the growth of efficient local exchange competitors such as Teligent. This becomes especially critical as Bell Operating Companies ("BOCs") are allowed into the in-region interLATA market.

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<sup>2</sup> There may be instances in which Teligent's interstate access rates differ slightly (lower or higher) from the incumbent LECs in a particular market due to recent incumbent LEC tariff revisions.

**II. AT MINIMUM, THE COMMISSION SHOULD REQUIRE IXC<sub>s</sub> TO INTERCONNECT WITH CLEC<sub>s</sub> AND PAY CLEC<sub>s</sub>' TARIFFED INTERSTATE ACCESS RATES WHEN THE CLEC OFFERS SUCH SERVICES AT INCUMBENT LEC EQUIVALENT RATES, TERMS, AND CONDITIONS.**

In the Notice, the Commission asks a number of questions pertaining to CLEC interstate access charges.<sup>3</sup> Many of these questions concern statutory interconnection obligations and CLEC market power in the interstate access market, particularly for terminating traffic. As discussed below, IXCs do, in fact, have certain interconnection obligations with respect to CLECs under the Act. This is not surprising given the relative bargaining positions of the parties, as well as one of the Act's underlying goals to enable end users to be able to reach other end users seamlessly and at parity.

Section 201(a) of the Communications Act of 1934, as amended<sup>4</sup> ("Act") requires "every common carrier engaged in interstate or foreign communication by wire or radio to . . . establish physical connections with other carriers, to establish through routes and charges applicable thereto . . . ."<sup>5</sup> Similarly, section 251(a)(1) requires all "telecommunications carriers" to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."<sup>6</sup> Section 202(a) of the Act prohibits common carriers from making "any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service . . . ."<sup>7</sup>

The interconnection requirements of sections 201(a) and 251(a) are intended to promote a network of networks, i.e., the ability of communications to move seamlessly from one network to

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<sup>3</sup> Notice at ¶ 239-57.

<sup>4</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151 et seq.).

<sup>5</sup> 47 U.S.C. § 201(a).

<sup>6</sup> 47 U.S.C. § 251(a).

<sup>7</sup> 47 U.S.C. § 202(a).

another.<sup>8</sup> Clearly, sections 201(a) and 251(a)(1) require common carriers, including interstate IXC's over which the Commission has exclusive jurisdiction, to comply with reasonable requests for interconnection, despite the fact that the Act does not provide specific procedural mechanisms for making and fulfilling such requests.

Traditionally, the Commission has analyzed section 201 and 202 issues from the point of view of the consumer of the service that would be paying for the related services, i.e., the Commission is typically asked to ensure that the seller of such services treat all potential buyers of such services equally.<sup>9</sup> In the past, the Commission's concerns regarding LEC-IXC interconnection pertained to refusals by AT&T, at the time the monopoly incumbent LEC, to interconnect with MCI, a downstream competitor in the interexchange market.<sup>10</sup> This eventually required the Commission to establish interconnection obligations and regulation of the originating and terminating access rates charged by incumbent LECs because non-affiliated IXC's did not possess bargaining leverage to negotiate reasonable interconnection rates with monopolist incumbent LECs.<sup>11</sup>

Although the Commission determined in 1995 that even the largest IXC, AT&T, is not dominant in the interexchange market, large IXC's nevertheless possess disproportionate bargaining power in the establishment of interexchange access arrangements with CLECs.

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<sup>8</sup> See, e.g., Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Notice of Proposed Rulemaking 11 FCC Rcd. 5020, 5024-25 (¶ 8) (1996); Access Charge Reform, CC Docket No. 96-262, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 11 FCC Rcd 21354 21358 (¶ 2) (1996).

<sup>9</sup> See, e.g., American Tel. and Tel. Co. Tariff F.C.C. No. 250, Docket No. 14251, TELPAK, Memorandum Opinion and Order, 37 FCC 1111 (1964); Local Exchange Carriers' Individual Cost Basis DS-3 Service Offerings, CC Docket Nos. 88-136, 89-305, Memorandum Opinion and Order, 4 FCC Rcd. 8634 (1989); Southwestern Bell Tel. Co. Tariff F.C.C. No. 73, Transmittal No. 2633, Order Concluding Investigation and Denying Application for Review, CC Docket No. 97-158, 13 FCC Rcd. 19311 (1997).

<sup>10</sup> See, e.g., id.

<sup>11</sup> See, e.g., Exchange Network Facilities for Interstate Access (ENFIA), CC Docket No. 78-371, Memorandum Opinion and Order, 71 F.C.C.2d 440 (1979).

Facilities-based CLECs, such as Teligent, have a limited universe of potential customers at any given time in a market, dependent on their network buildout. Such CLECs cannot afford to turn away the business of all potential local customers that demand the services of an IXC with, for example, a 25 percent market share that may insist on unreasonable and/or discriminatory interconnection terms in order to do so.<sup>12</sup> This is especially problematic when the local service customer has entered into a long-term contract with a particular IXC and is not able to switch its long distance carrier should that long distance carrier refuse to interconnect with the potential local customer's chosen CLEC.<sup>13</sup> As significant, is the fact that such CLECs also cannot afford to lose the business of customers that would understandably demand to be able to receive long distance calls from users of the 25 percent market share IXC because such IXC refuses to enter into reasonable terminating access arrangements with the CLEC. In addition, section 251(b)(3) of the Act places an obligation on CLECs to allow their customers "1+" access to the interexchange carrier of their choice, obligating the originating CLEC to ensure the existence of interconnection arrangements between it and the local customer's chosen IXC for the delivery of interexchange traffic to that IXC.<sup>14</sup> CLECs are unable to meet this obligation without cooperation from and access arrangements with IXCs.

IXCs, no matter what their size, can afford to lose access to the fraction of a percent of the potential market they stand to lose if they refuse to interconnect with a particular CLEC for originating and, most likely, terminating, purposes. This is in contrast to IXC relations with incumbent LECs, the latter of which controls the vast majority of local customers. Thus, while not monopsonists, IXCs, particularly large IXCs, gain the advantages of monopsony – the ability

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<sup>12</sup> Teligent has been the threatened victim of this market power on a number of occasions.

<sup>13</sup> Teligent has encountered this barrier to entry into the local market on a number of occasions.

<sup>14</sup> 47 U.S.C. § 251(b)(3); 47 CFR §§ 51.209-213.

to drive down prices they pay for services they consume, i.e., exchange access service, to unreasonable levels (from the perspective of the seller) because the seller is forced to do so in order to fulfill its statutory obligations and meet the requirements of its customer. Because the large IXC's all have CLEC affiliates of their own that would benefit from unaffiliated CLEC's being forced out of the market due to the inability of their potential customers to access the IXC of their choice, large IXC's have an additional incentive to limit the ability of other CLEC's to interconnect their interexchange networks. As BOC's join the IXC ranks, IXC bargaining power with respect to CLEC's will mushroom. Without sufficient safeguards, such BOC's will use their purchasing power in the interexchange market to favor their local affiliates to the detriment of CLEC's and CLEC-affiliated IXC's.

An IXC's status as a buyer rather than a seller of interstate access service does not relieve it of its common carrier obligations. As discussed above, as common carriers, IXC's must interconnect with CLEC's in a nondiscriminatory manner upon request. It is not reasonable for them to abuse their bargaining position with respect to CLEC's to force CLEC's to offer their services at below-market rates or to refuse to deal at all.

To be sure, an IXC is engaging in an illegal discriminatory "practice" with respect to "like communication service" if it exchanges traffic with incumbent LEC's, paying the incumbent LEC's tariffed interstate access rates yet refuses to do the same with a CLEC that provides the identical service at the same or lower rate (such as Teligent). At minimum, the Commission should establish rules that require IXC's to exchange traffic with CLEC's at the CLEC's tariffed rate if the CLEC's interstate access service is offered at equivalent (or better) terms and conditions and at equivalent (or lower) rates. This requirement should apply to all IXC's, including "1+" IXC's as well as "dial-around" IXC's. IXC's that frivolously protest the

comparability of CLEC tariffs in this regard, should be subject to sufficient punitive damages for violating the Act to discourage such activity.

Ideally, the Commission should establish rules that recognize that certain CLEC access costs, hence, access rates, may actually exceed those of the incumbent LEC and therefore a CLEC's rate structures and rates may legitimately be different from, or be higher than, those of the incumbent LEC in that market. As a theoretical matter, there are valid reasons why a CLEC may charge "reasonable," but higher cost-based rates. One important reason is that a CLEC may have higher costs. The Commission recognizes costs vary among service providers or it would require all incumbent LECs to charge the same rates for access service, regardless of whether the incumbent LEC serves a few hundred customers or tens of thousands of customers. Intuitively, the economies of scale enjoyed by a major incumbent LEC are significantly greater than those experienced by many smaller incumbent LECs. NECA tariffs bear this out. It is reasonable also to expect CLEC economies of scale are less than those of the major incumbent LECs.

Teligent encourages the Commission to explore methods of comparing total rate levels under different rate structures that remain administratively simple and provide clear signals to CLECs and IXC's regarding the presumptive validity of a variety of rate structures and levels. In the interim, however, in both the spirit and letter of the Act, Teligent implores the Commission to declare that all IXC's have statutory obligations to interconnect their long distance networks with all CLECs that offer originating and terminating access pursuant to just and reasonable rates and terms. In addition, Teligent urges the Commission, at minimum to deem any CLEC's originating and terminating access rates that are the same as or less than the incumbent LECs in that market to be presumptively just and reasonable, pursuant to the requirements of sections 201 of the Act.

### III. CONCLUSION

For the foregoing reasons, Teligent respectfully requests the Commission adopt rules confirming IXCs' obligations to interconnect with CLECs and pay CLEC's tariffed interstate access rates when the CLEC offers such services at incumbent LEC equivalent rates under equivalent terms and conditions.

Respectfully submitted,

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